

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 ROBIN L. GARDNER,
4 Petitioner,

5 vs.

6 RICK MARSHALL, *et al.*,

7 Respondents.
8

Case No. 2:15-cv-00631-GMN-VCF

ORDER

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10 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C.
11 § 2254 by a Nevada state prisoner.

12 Neither a filing fee nor an application to proceed *in forma pauperis* was submitted
13 with the petition. When filing a habeas action, a petitioner must either submit the \$5.00
14 filing fee for habeas petitions or an application to proceed *in forma pauperis*. Due to the
15 lack of an *in forma pauperis* application or filing fee, the present action will be dismissed
16 without prejudice to the filing of a new petition in a new action with a pauper application
17 with all required attachments. It does not appear from the papers presented that a dismissal
18 without prejudice would result in a promptly-filed new petition being untimely. In this
19 regard, petitioner at all times remains responsible for calculating the running of the
20 limitations period as applied to his case and properly commencing a timely-filed habeas
21 corpus action.

22 **IT THEREFORE IS ORDERED** that this action is **DISMISSED** without prejudice
23 to the filing of **a new petition in a new action**.

24 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send petitioner two
25 copies of an *in forma pauperis* application form for a prisoner, one copy of the instructions
26 for the same, two copies of a blank 28 U.S.C. § 2254 habeas petition form, and one copy of
27 instructions for the same.

28 **IT IS FURTHER ORDERED** that petitioner may file a new petition in a new

1 action, but he may not file further documents in this action.

2 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.
3 Reasonable jurists would not find the dismissal of the improperly-commenced action
4 without prejudice to be debatable or wrong.

5 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
6 accordingly.

7 **DATED** this 15th day of April, 2015.

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12 Gloria M. Navarro, Chief Judge
13 United States District Court
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